

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

NO. 7:10-CV-202-H

FARMERS COOPERATIVE SOCIETY  
OF SIOUX CENTER, IOWA and  
COOPERATIVE ELEVATOR  
ASSOCIATION,

Appellants,

v.

FIRST NATIONAL BANK OF OMAHA,

Appellee.

**ORDER**

This matter is before the court on Appellee First National Bank of Omaha's motion for certification and motion to stay proceedings. The appellants have responded, and supplemental briefs have been filed. These motions are ripe for adjudication.

Appellees seek to have this court certify an appeal to the Fourth Circuit Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A). To grant appellee's motion, this court has to certify that its order (1) involves a question of law as to which there is no controlling decision of that court of appeals

or of the Supreme Court of the United States, or involves a matter of public importance; (2) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (3) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken. Id.

Appellees argue that there is no controlling decision of the Fourth Circuit or of the United States Supreme Court. This case involves the statutory construction of Chapter 570A of Title XIV of the Iowa Code and a legal determination regarding whose lien takes priority. This issue would be one of first impression in the Fourth Circuit. However, since the filing of appellee's motion, the Iowa Supreme Court has issued its ruling in Oyens Feed & Supply v. Primebank, No. 11-0532 (Iowa Dec. 30, 2011), upon a certified question of law from the United States District Court for the Northern District of Iowa. The Iowa Supreme Court determined, as did this court, that "section 570A.5(3) creates a superpriority rule independent of the chapter's certified request provision; accordingly, [the feed supplier] did not have to comply with section 570A.2 in order to achieve superpriority status under section 570A.5(3)." Id. The Iowa Supreme Court noted this court's ruling in the instant case and cited it with approval.

In light of the Iowa Supreme Court's authoritative interpretation of the question which appellee has sought to certify on appeal to the Fourth Circuit, appellee's motion to certify [DE #32 and #34] and motion to stay [DE #36] are DENIED.

This 10<sup>th</sup> day of January 2012.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", is written over a horizontal line.

Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#26